

the IEP and this Chapter, the IEP shall prevail as between Canada and the United States to the extent of that inconsistency.

## Chapter Seven: Agriculture and Sanitary and Phytosanitary Measures

### Section A - Agriculture

#### Article 701: Scope and Coverage

1. This Section applies to measures adopted or maintained by a Party relating to agricultural trade.

2. In the event of any inconsistency between this Section and another provision of this Agreement, this Section shall prevail to the extent of the inconsistency.

#### Article 702: International Obligations

1. Annex 702.1 applies to the Parties specified in that Annex with respect to agricultural trade under certain agreements between them.

2. Prior to adopting pursuant to an intergovernmental commodity agreement, a measure that may affect trade in an agricultural good between the Parties, the Party proposing to adopt the measure shall consult with the other Parties with a view to avoiding nullification or impairment of a concession granted by that Party in its Schedule to Annex 302.2.

3. Annex 702.3 applies to the Parties specified in that Annex with respect to measures adopted or maintained pursuant to an intergovernmental coffee agreement.

#### Article 703: Market Access

1. The Parties shall work together to improve access to their respective markets through the reduction or elimination of import barriers to trade between them in agricultural goods.

#### *Customs Duties, Quantitative Restrictions, and Agricultural Grading and Marketing Standards*

2. Annex 703.2 applies to the Parties specified in that Annex with respect to customs duties and quantitative restrictions, trade in sugar and syrup goods, and agricultural grading and marketing standards.

#### *Special Safeguard Provisions*

3. Each Party may, in accordance with its Schedule to Annex 302.2, adopt or maintain a special safeguard in the form of a tariff rate quota on an agricultural good listed in its Section of Annex 703.3. Notwithstanding Article 302.2, a Party may not apply an over-quota tariff rate under a special safeguard that exceeds the lesser of:

a) the most-favored-nation (MFN) rate as of July 1, 1991; and

b) the prevailing MFN rate.

4. No Party may, with respect to the same good and the same country, at the same time:

a) apply an over-quota tariff rate under paragraph 3; and

b) take an emergency action covered by Chapter Eight (Emergency Action).

#### Article 704: Domestic Support

The Parties recognize that domestic support measures can be of crucial importance to their agricultural sectors but may also have trade distorting and production effects and that domestic support reduction commitments may result from agricultural multilateral trade negotiations under the *General Agreement on Tariffs and Trade (GATT)*. Accordingly, where a Party supports its agricultural producers, that Party should endeavor to work toward domestic support measures that:

a) have minimal or no trade distorting or production effects; or

b) are exempt from any applicable domestic support reduction commitments that may be negotiated under the GATT.

The Parties further recognize that a Party may change its domestic support measures, including those that may be subject to reduction commitments, at the Party's discretion, subject to its rights and obligations under the GATT.

#### Article 705: Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall cooperate in an effort to achieve an agreement under the GATT to eliminate those subsidies.

2. The Parties recognize that export subsidies for agricultural goods may prejudice the interests of importing and exporting Parties and, in particular, may disrupt the markets of importing Parties. Accordingly, in addition to the rights and obligations of the Parties specified in Annex 702.1, the Parties affirm that it is inappropriate for a Party to provide an export subsidy for an agricultural good exported to the territory of another Party where there are no other subsidized imports of that good into the territory of that other Party.

3. Except as provided in Annex 702.1, where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of another Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of any such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying, or immediately cease to apply, any export subsidy to exports of such good to the territory of the importing Party.

4. Except as provided in Annex 702.1, an exporting Party shall deliver written notice to the importing Party at least three days, excluding weekends, prior to adopting an export subsidy measure on an agricultural good exported to the territory of another Party. The exporting Party shall consult with the importing Party within 72 hours of receipt of the importing Party's written request, with a view to eliminating the subsidy or minimizing any adverse impact on the market of the importing Party for that good. The importing Party shall, when requesting consultations with the exporting Party, at the same time, deliver written notice to a third Party of the request. A third Party may request to participate in such consultations.

5. Each Party shall take into account the interests of the other Parties in the use of any export subsidy on an agricultural good, recognizing that such subsidies may have prejudicial effects on the interests of the other Parties.

6. The Parties hereby establish a Working Group on Agricultural Subsidies, comprising representatives of each Party, which shall meet at least semi-annually or as the Parties may otherwise agree, to work toward elimination of all export subsidies affecting agricultural trade between the Parties. The functions of the Working Group shall include:

- a) monitoring the volume and price of imports into the territory of any Party of agricultural goods that have benefitted from export subsidies;
- b) providing a forum for the Parties to develop mutually acceptable criteria and procedures for reaching agreement on the limitation or elimination of export subsidies for imports of agricultural goods into the territories of the Parties; and
- c) reporting annually to the Committee on Agricultural Trade, established under Article 706, on the implementation of this Article.

7. Notwithstanding any other provision of this Article:

- a) if the importing and exporting Parties agree to an export subsidy for an agricultural good exported to the territory of the importing Party, the exporting Party or Parties may adopt or maintain such subsidy; and
- b) each Party retains its rights to apply countervailing duties to subsidized imports of agricultural goods from the territory of a Party or non-Party.

#### Article 706: Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee's functions shall include:

- a) monitoring and promoting cooperation on the implementation and administration of this Section;

b) providing a forum for the Parties to consult on issues related to this Section at least semi-annually and as the Parties may otherwise agree; and

c) reporting annually to the Commission on the implementation of this Section.

#### Article 707: Advisory Committee on Private Commercial Disputes regarding Agricultural Goods

The Committee shall establish an Advisory Committee on Private Commercial Disputes regarding Agricultural Goods, comprising persons with expertise or experience in the resolution of private commercial disputes in agricultural trade. The Advisory Committee shall report and provide recommendations to the Committee for the development of systems in the territory of each Party to achieve the prompt and effective resolution of such disputes, taking into account any special circumstance, including the perishability of certain agricultural goods.

#### Article 708: Definitions

For purposes of this Section:

agricultural good means a good provided for in any of the following:

Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.

(a)

Harmonized System (HS) Chapters 1 through 24 (other than a fish or fish product); or

(b)

HS subheading

2905.43

manitol

HS subheading

2905.44

sorbitol

HS heading

33.01

essential oils

HS headings

35.01 to 35.05

albuminoidal substances, modified starches, glues

HS subheading

3809.10

finishing agents

HS subheading

3823.60

sorbitol n.e.p.

HS headings

41.01 to 41.03

hides and skins

HS heading

43.01

raw furskins

HS headings

50.01 to 50.03

raw silk and silk waste

HS headings

51.01 to 51.03

wool and animal hair

HS headings

52.01 to 52.03

raw cotton, cotton waste and cotton carded or combed

HS heading

53.01

raw flax

HS heading

53.02

raw hemp

customs duty means "customs duty" as defined in Article 318 (National Treatment and Market Access for Goods - Definitions);

duty-free means "duty-free" as defined in Article 318;

fish or fish product means a fish or crustacean, mollusc or other aquatic invertebrate, marine mammal, or a product thereof provided for in any of the following:

HS Chapter

03

fish and crustaceans, molluscs and other aquatic invertebrates

HS heading

05.07

tortoise-shell, whalebone and whalebone hair and those fish or crustaceans, molluscs or other aquatic invertebrates, marine mammals, and their products within this heading

HS heading

05.08

coral and similar materials

HS heading

05.09

natural sponges of animal origin

HS heading

05.11

products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of

Chapter 3

HS heading

15.04

fats and oils and their fractions, of fish or marine mammals

HS heading

16.03

"non-meat" extracts and juices

HS heading

16.04

prepared or preserved fish

HS heading

16.05

prepared preserved crustaceans, molluscs and other aquatic invertebrates;

HS subheading

2301.20

flours, meals, pellets of fish

material means "material" as defined in Article 415 (Rules of Origin - Definitions);

over-quota tariff rate means the rate of customs duty to be applied to quantities in excess of the quantity specified under a tariff rate quota;

sugar or syrup good means "sugar or syrup good" as defined in Annex 703.2;

tariff item means a "tariff item" as defined in Annex 401; and

tariff rate quota means a mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specified quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

Annex 702.1

#### Incorporation of Trade Provisions

1. Articles 701, 702, 704, 705, 706, 707, 710 and 711 of the *Canada - United States Free Trade Agreement* apply, as between Canada and the United States, which Articles are hereby incorporated into and made a part of this Agreement.

2. The definitions of the terms specified in Article 711 of the *Canada - United States Free Trade Agreement* shall apply to the Articles incorporated by paragraph 1.

3. For purposes of this incorporation, any reference to Chapter Eighteen of the *Canada - United States Free Trade Agreement* shall be deemed to be a reference to Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) of this Agreement.

4. The Parties understand that Article 710 of the *Canada - United States Free Trade Agreement* incorporates the GATT rights and obligations of Canada and the United States with respect to agricultural, food, beverage and certain related goods, including exemptions by virtue of paragraph (1)(b) of the Protocol of Provisional Application of the GATT and waivers granted under Article XXV of the GATT.

Annex 702.3

## Intergovernmental Coffee Agreement

Notwithstanding Article 2101 (General Exceptions), neither Canada nor Mexico may adopt or maintain a measure, pursuant to an intergovernmental coffee agreement, that restricts trade in coffee between them.

### Annex 703.2

#### Market Access

##### Section A - Mexico and the United States

1. This Section applies only as between Mexico and the United States.

##### *Customs Duties and Quantitative Restrictions*

2. With respect to agricultural goods, Article 309(1) and (2) (Import and Export Restrictions) applies only to qualifying goods.

3. Each Party waives its rights under Article XI:2(c) of the GATT, and those rights as incorporated by Article 309, regarding any measure adopted or maintained with respect to the importation of qualifying goods.

4. Except with respect to a good set out in Section B or C of Annex 703.3 or Appendix 703.2.A.4, where a Party applies an over-quota tariff rate to a qualifying good pursuant to a tariff rate quota set out in its Schedule to Annex 302.2, or increases a customs duty for a sugar or syrup good to a rate, in accordance with paragraph 18, that exceeds the rate of customs duty for that good set out in its GATT Schedule of Tariff Concessions as of July 1, 1991, the other Party waives its rights under the GATT with respect to the application of that rate of customs duty.

5. Notwithstanding Article 302(2) (Tariff Elimination), where an agreement resulting from agricultural multilateral trade negotiations under the GATT enters into force with respect to a Party pursuant to which it has agreed to convert a prohibition or restriction on its importation of an agricultural good into a tariff rate quota or a customs duty, that Party may not apply to such good that is a qualifying good an over-quota tariff rate that is higher than the lower of the over-quota tariff rate set out in:

a) its Schedule to Annex 302.2, and

b) that agreement, and paragraph 4 shall no longer apply to the other Party with respect to that good.

6. Each Party may count the in-quota quantity under a tariff rate quota applied to a qualifying good in accordance with its Schedule to Annex 302.2 toward the satisfaction of commitments regarding an in-quota quantity of a tariff rate quota or level of access under a restriction on the importation of that good:

a) that have been agreed under the GATT, including as set out in its GATT Schedule of Tariff Concessions; or

b) undertaken by the Party as a result of any agreement resulting from agricultural multilateral trade negotiations under the GATT.

7. Neither Party may count toward the satisfaction of a commitment regarding an in-quota quantity of a tariff rate quota in its Schedule to Annex 302.2 an agricultural good admitted or entered into a maquiladora or foreign-trade zone and re-exported, including subsequent to processing.

8. The United States shall not adopt or maintain, with respect to the importation of an agricultural qualifying good, any fee applied pursuant to section 22 of the *U.S. Agricultural Adjustment Act*.

9. Neither Party may seek a voluntary restraint agreement from the other Party with respect to the exportation of meat that is a qualifying good.

10. Notwithstanding Chapter Four (Rules of Origin), for purposes of applying a rate of customs duty to a good, the United States may consider as if it were non-originating a good provided for in:

a) heading 12.02 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico;

b) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 12.02 used in the production of that good is not wholly obtained in the territory of Mexico; or

c) U.S. tariff item 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in HS heading 1701.99 used in the production of that good is not a qualifying good.

11. Notwithstanding Chapter Four, for purposes of applying a rate of customs duty to a good, Mexico may consider as if it were non-originating a good provided for in:

a) HS heading 12.02 that is exported from the territory of the United States, if that good is not wholly obtained in the territory of the United States;

b) HS subheading 2008.11 that is exported from the territory of the United States, if any material provided for in heading 12.02 used in the production of that good is not wholly obtained in the territory of the United States; or

c) Mexican tariff item 1806.10.01 (except those with a sugar content less than 90 percent) or 2106.90.05 (except those that contain added flavoring matter) that is exported from the territory of the United States, if any material provided for in HS subheading 1701.99 used in the production of that good is not a qualifying good.



*Restriction on Same-Condition Substitution Duty Drawback*

12. Beginning on the date of entry into force of this Agreement, neither Mexico nor the United States may refund the amount of customs duties paid, or waive or reduce the amount of customs duties owed, on any agricultural good imported into its territory that is substituted for an identical or similar good that is subsequently exported to the territory of the other Party.

*Trade in Sugar and Syrup Goods*

13. The Parties shall consult by July 1 of each of the first 14 years beginning with 1994 to determine jointly, in accordance with Appendix 703.2.A.13, whether, and if so, by what quantity either Party:

- a) is projected to be a net surplus producer of sugar in the next marketing year; and
- b) has been a net surplus producer in any marketing year beginning after the date of entry into force of this Agreement, including the current marketing year.

14. For each of the first 14 marketing years beginning after the date of entry into force of this Agreement, each Party shall accord duty-free treatment to a quantity of sugar and syrup goods that are qualifying goods not less than the greatest of:

- a) 7,258 metric tons raw value;
- b) the quota allocated by the United States for a non-Party within the category designated "other specified countries and areas" under paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States; and
- c) subject to paragraph 15, the other Party's projected net production surplus for that marketing year, as determined under paragraph 13 and adjusted in accordance with Appendix 703.2.A.13.

15. Subject to paragraph 16, the duty-free quantity of sugar and syrup goods under paragraph 14(c); shall not exceed the following ceilings:

- a) for each of the first six marketing years, 25,000 metric tons raw value;
- b) for the seventh marketing year, 150,000 metric tons raw value; and
- c) for each of the eighth through 14th marketing years, 110 percent of the previous marketing year's ceiling.

16. Beginning with the seventh marketing year, paragraph 15 shall not apply where, pursuant to paragraph 13, the Parties have determined the exporting Party to be a net surplus producer:

- a) for any two consecutive marketing years beginning after the date of entry into force of this Agreement;

b) for the previous and current marketing years; or

c) in the current marketing year and projected it to be a net surplus producer in the next marketing year, unless subsequently the Parties determine that, contrary to the projection, the exporting Party was not a net surplus producer for that year.

17. Mexico shall, beginning no later than six years after the date of entry into force of this Agreement, apply on a most-favored-nation (MFN) basis a tariff rate quota for sugar and syrup goods consisting of rates of customs duties no less than the lesser of the corresponding:

a) MFN rates of the United States in effect on the date that Mexico commences to apply the tariff rate quota; and

b) prevailing MFN rates of the United States.

18. When Mexico applies a tariff rate quota under paragraph 17, it shall not apply on a sugar or syrup good that is a qualifying good a rate of customs duty higher than the rate of customs duty applied by the United States on such good.

19. Each Party shall determine the quantity of a sugar or syrup good that is a qualifying good based on the actual weight of such good, converted as appropriate to raw value, without regard to the good's packaging or presentation.

20. If the United States eliminates its tariff rate quota for sugar and syrup goods imported from non-Parties, at such time the United States shall accord to such goods that are qualifying goods the better of the treatment, as determined by Mexico, of:

a) the treatment provided for in paragraphs 14 through 16; or

b) the MFN treatment granted by the United States to non-Parties.

21. Except as provided in paragraph 22, Mexico shall not be required to apply the applicable rate of customs duty provided in this Annex or in its Schedule to Annex 302.2 to a sugar or syrup good, or sugar-containing product, that is a qualifying good where the United States has granted or will grant benefits under any re-export program or any like program in connection with the export of the good. The United States shall notify Mexico in writing within two days, excluding weekends, of any export to Mexico of such a good for which the benefits of any re-export program or any other like program have been or will be claimed by the exporter.

22. Notwithstanding any other provision of this Section:

a) the United States shall accord duty-free treatment to imports of

(i) raw sugar that is a qualifying good that will be refined in the territory of the United States and re-exported to the territory of Mexico, and

(ii) refined sugar that is a qualifying good that has been refined from raw sugar produced in, and exported from, the territory of the United States;

b) Mexico shall accord duty-free treatment to imports of

(i) raw sugar that is a qualifying good that will be refined in the territory of Mexico and re-exported to the territory of the United States, and

(ii) refined sugar that is a qualifying good that has been refined from raw sugar produced in, and exported from, the territory of Mexico; and

c) imports qualifying for duty-free treatment pursuant to subparagraphs (a) and (b) shall not be subject to, or counted under, any tariff rate quota.

*Agricultural Grading and Marketing Standards.*

23. Where a Party adopts or maintains a measure respecting the classification, grading or marketing of a domestic agricultural good, it shall accord treatment to a like qualifying good destined for processing no less favorable than it accords under the measure to the domestic good destined for processing. The importing Party may adopt or maintain measures to ensure that such imported good is processed.

24. Paragraph 23 shall be without prejudice to the rights of either Party under the GATT or under Chapter Three (National Treatment and Market Access) regarding measures respecting the classification, grading or marketing of an agricultural good, whether or not destined for processing.

25. The Parties hereby establish a Working Group, comprising representatives of Mexico and the United States, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Standards-Related Measures established under Article 913 (Committee on Standards- Related Measures), the operation of agricultural grade and quality standards as they affect trade between the Parties, and shall resolve issues that may arise regarding the operation of the standards. This Working Group shall report to the Committee on Agricultural Trade established under Article 706.

*Definitions*

26. For purposes of this Section:

marketing year means a 12-month period beginning October 1;

net production surplus means the quantity by which a Party's domestic production of sugar exceeds its total consumption of sugar during a marketing year, determined in accordance with this Section;

net surplus producer means a Party that has a net production surplus;

plantation white sugar means crystalline sugar that has not been refined and is intended for human consumption without further processing or refining;

qualifying good means an originating good that is an agricultural good, except that in determining whether such good is an originating good, operations performed in or materials obtained from Canada shall be considered as if they were performed in or obtained from a non-Party;

raw value means the equivalent of a quantity of sugar in terms of raw sugar testing 96 degrees by the polariscope, determined as follows:

a) the raw value of plantation white sugar equals the number of kilograms thereof multiplied by 1.03;

b) the raw value of liquid sugar and invert sugar equals the number of kilograms of the total sugars thereof multiplied by 1.07; and

c) the raw value of other imported sugar and syrup goods equals the number of kilograms thereof multiplied by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion);

sugar means raw or refined sugar derived directly or indirectly from sugar cane or sugar beets, including liquid refined sugar; and

sugar-containing product means a good containing sugar; and

wholly obtained in the territory of means harvested in the territory of.

#### Section B - Canada and Mexico

1. This Section applies only as between Canada and Mexico.

##### *Customs Duties and Quantitative Restrictions*

2. With respect to agricultural goods, Article 309(1) and (2) (Import and Export Restrictions) applies only to qualifying goods.

3. Except with respect to a good set out in Sections A or B of Annex 703.3., where a Party applies an over-quota tariff rate to a qualifying good pursuant to a tariff rate quota set out in its Schedule to Annex 302.2 or increases a customs duty for a sugar or syrup good to a rate that exceeds the rate of customs duty for that good set out in its GATT Schedule of Tariff Concessions as of July 1, 1991, the other Party waives its rights under the GATT with respect to the application of that rate of customs duty.

4. Notwithstanding Article 302(2) (Tariff Elimination), where an agreement resulting from agricultural multilateral trade negotiations under the GATT enters into force with respect to a Party pursuant to which it has agreed to convert a prohibition or restriction on its importation of an agricultural good into a tariff rate quota or a customs duty, that Party may not apply to such good that is a qualifying good an over-quota tariff rate that is higher than the lower of the over-quota tariff rate in:

a) its Schedule to Annex 302.2, and

b) that agreement,

and paragraph 3 shall no longer apply to the other Party with respect to that good.

5. Each Party may count the in-quota quantity under a tariff rate quota applied to a qualifying good in accordance with its Schedule to Annex 302.2 toward the satisfaction of commitments regarding an in-quota quantity of a tariff rate quota or level of access under a restriction on the importation of that good:

a) that have been agreed under the GATT, including as set out in its GATT Schedule of Tariff Concessions; or

b) undertaken by the Party as a result of any agreement resulting from agricultural multilateral trade negotiations under the GATT.

6. Subject to this Section and for purposes of this Section, Canada and Mexico incorporate their respective rights and obligations with respect to agricultural goods under the GATT and agreements negotiated under the GATT, including their rights and obligations under Article XI of the GATT.

7. Notwithstanding paragraph 6 and Article 309:

a) the rights and obligations of the Parties under Article XI:2(c)(i) of the GATT and those rights as incorporated by Article 309 shall apply with respect to trade in agricultural goods only to the dairy, poultry and egg goods set out in Appendix 703.2.B.7; and

b) with respect to such dairy, poultry and egg goods that are qualifying goods, either Party may adopt or maintain a prohibition or restriction or a customs duty on the importation of such good consistent with its rights and obligations under the GATT.

8. Without prejudice to Chapter Eight (Emergency Action), neither Party may seek a voluntary restraint agreement from the other Party with respect to the exportation of a qualifying good.

9. Notwithstanding Chapter Four (Rules of Origin), Mexico may treat a good provided for in Mexican tariff item 1806.10.01 (except those with a sugar content less than 90 percent) or 2106.90.05 (except those that contain added flavoring matter) that is exported from the territory of Canada as non- originating for purposes of applying a rate of customs duty to that good, if any material provided for in HS subheading 1701.99 used in the production of such good is not a qualifying good.

10. Notwithstanding Chapter Four (Rules of Origin), Canada may treat a good provided for in Canadian tariff item 1806.10.10 or 2106.90.21 that is exported from the territory of Mexico as non-originating for purposes of applying a rate of customs duty to that good, if any material provided for in HS subheading 1701.99 used in the production of such good is not a qualifying good.

### *Trade in Sugar*

11. Mexico shall apply a rate of customs duty equal to its most-favored-nation over-quota tariff rate to a sugar or syrup that is a qualifying good.

12. Canada may apply a rate of customs duty on a sugar or syrup good that is a qualifying good equal to the rate of customs duty applied by Mexico pursuant to paragraph 11.

### *Agricultural Grading and Marketing Standards*

13. The Parties hereby establish a Working Group, comprising representatives of Canada and Mexico, which shall meet annually or as otherwise agreed. The Working Group shall review, in coordination with the Committee on Standards-Related Measures established under Article 913 (Committee on Standards-Related Measures), the operation of agricultural grade and quality standards as they affect trade between the Parties, and shall resolve issues that may arise regarding the operation of the standards. This Working Group shall report to the Committee on Agricultural Trade established under Article 706.

### *Definitions*

14. For purposes of this Section:

qualifying good means an originating good that is an agricultural good except that, in determining whether such good is an originating good, operations performed in or material obtained from the United States shall be considered as if they were performed in or obtained from a non-Party.

### Section C - Definitions

For purposes of this Annex:

sugar or syrup good means:

a) for imports into Canada, a good provided for in any of the current tariff items 1701.11.10, 1701.11.20, 1701.11.30, 1701.11.40, 1701.11.50, 1701.12.00, 1701.91.00, 1701.99.00, 1702.90.31, 1702.90.32, 1702.90.33, 1702.90.34, 1702.90.35, 1702.90.36, 1702.90.37, 1702.90.38, 1702.90.40, 1806.10.10 and 2106.90.21 of the Canadian Tariff Schedule;

b) for imports into Mexico, a good provided for in any of the current tariff items 1701.11.01, 1701.11.99, 1701.12.01, 1701.12.99, 1701.91 (except those that contain added flavoring matter), 1701.99.01, 1701.99.99, 1702.90.01, 1806.10.01 (except those with a sugar content less than 90 percent) and 2106.90.05 (except those that contain flavoring matter) of the *General Import Duty Act* ("Ley del Impuesto General de Importación"); and

c) for imports into the United States, a good provided for in any of the current tariff items 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the U.S. Harmonized Tariff Schedule, without regard to the quantity imported.

#### Appendix 703.2.A.4

##### Goods not Subject to Annex 703.2.A.4

Note: For purposes of reference only, descriptions are provided next to the corresponding tariff provision.

##### Schedule of Mexico

###### Mexican Tariff Item

###### Description

2009.11.01

Orange juice, frozen

2009.19.01

Orange juice, with a grade of concentration not greater than 1.5 (single-strength orange juice)

##### Schedule of the United States

###### U.S. Tariff Item

###### Description

2009.11.00

Orange juice, frozen

2009.19.20

Orange juice, not frozen, not concentrated (single-strength orange juice)

#### Appendix 703.2.A.13

##### Determination and Adjustment of Net Production Surplus

1. For purposes of Section A(14)(c), where the Parties project a net production surplus for a Party for the next marketing year, the projected surplus shall be:

a) increased by the amount, if any, by which the actual net production surplus exceeds the projected net production surplus in the most recent marketing year for which the Parties projected a net production surplus for that Party; or

b) decreased by the amount, if any, by which the projected net production surplus exceeds the actual net production surplus in the most recent marketing year for which the Parties projected a net production surplus for that Party;

as further demonstrated by the following formulas:

$$ANPS = (PP_y - CP_y) + CF$$

where:

ANPS =

adjusted net production surplus

PP =

projected domestic production of sugar

CP =

projected total consumption of sugar

CF =

correction factor

y =

next marketing year,

and

$$CF = (PAys - CAys) - (PPys - CPys)$$

where:

PA =

actual domestic production of sugar

CA =

actual total consumption of sugar

ys =

most recent previous marketing year for which the Parties projected a net production surplus for that Party.

2. For purposes only of paragraph 1, neither the projected net production surplus (PPys -CPys) nor the actual net production surplus (PAys - CAys) in the most recent marketing year for which the Parties projected a net production surplus for that Party may be considered to:

a) exceed the quantity, if any, in Section A(15) applicable to that year; or

b) be lower than the greater of

(i) 7,258 metric tons raw value, or

(ii) the quantity in paragraph 14(b) of Section A applicable to that year.

3. In appropriate circumstances, a Party shall consider adjustments to projections of its net production surplus when:

Fc greater than (B + 10 %)

where

F

is the percentage change in stocks from the beginning to the end of a marketing year z, expressed as a positive percentage

c

is current marketing year

F

is calculated in accordance with the following formula:

F =



$S_b - S_e$

$\times 100$

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$S_b$

$S_e$

beginning stocks in marketing year z

$S_e$

ending stocks in marketing year z

B

the average annual percentage change in stocks over the previous 5 marketing years, calculated in accordance with the following formula:

B =

$\{ 5 / \text{Summation of FN} \}$

N=1

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5

N

previous marketing years, ranging from 1 (first preceding year) to 5 (fifth preceding year).

4. For purposes of determining net production surplus or projected net production surplus:

a) domestic production means all sugar and syrup goods derived from sugar cane or sugar beets grown in a Party's territory; and

b) total consumption means all sugar and syrup goods consumed directly, or indirectly in the form of a good containing such goods, in the territory of a Party.

5. Each Party shall permit representatives from the other Party to observe and comment on its statistics on production, consumption, trade and stocks and on the methodology it uses to prepare such statistics.

6. Statistics on production, consumption, trade and stocks shall be provided by:

a) the Secretaría de Agricultura y Recursos Hidráulicos, the Secretaría de Comercio y Fomento Industrial, and the Secretaría de Hacienda y Crédito Público; and

b) the U.S. Department of Agriculture (USDA).

Appendix 703.2.B.7

Dairy, Poultry and Egg Goods

*Note: (For purposes of reference only, descriptions are provided next to the corresponding tariff provision).*

Schedule of Canada

For Canada, a dairy, poultry or egg good is a good provided for in one of the following Canadian tariff items:

Canadian Tariff Items

Description

0105.11.20

Broilers of the species *Gallus domesticus* for domestic production, weighing not more than 185 g

0105.91.00

Live fowls of the species *Gallus domesticus*, weighing 185g. or more

0105.99.00

Live ducks, geese, turkeys and guinea fowls, weighing 185g. or more

0207.10.00

Meat of poultry of heading No. 01.05, not cut in pieces, fresh or chilled

0207.21.00

Meat of fowls of the species *Gallus domesticus*, not cut in pieces, frozen

0207.22.00

Meat of turkeys, not cut in pieces, frozen

0207.39.00

Cut meat and edible offal (including livers other than fatty livers of geese or ducks), of the poultry of heading No. 01.05, fresh or chilled

0207.41.00

Cut meat and edible offal, other than livers, of fowls of the species *Gallus domesticus*, frozen

0207.42.00

Cut meat and edible offal, other than livers, of turkeys, frozen

0207.50.00

Livers of poultry of heading No. 01.05, frozen

0209.00.20

Poultry fat (not rendered), fresh, chilled, frozen, salted, in brine, dried or smoked

0210.90.10

Meat of poultry, salted, in brine, dried or smoked

0401.10.00

Milk and cream, not concentrated nor containing added sugar or other sweetening matter of a fat content, by weight, not exceeding 1 percent

0401.20.00

Milk and cream, not concentrated nor containing added sugar or other sweetening matter of a fat content, by weight, exceeding 1 percent but not exceeding 6 percent

0401.30.00

Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 6 percent

0402.10.00

Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5 percent

0402.21.10

Milk, concentrated, not containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent

0402.21.20

Cream, concentrated, not containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent

0402.29.10

Milk, whether or not concentrated, containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent

0402.29.20

Cream, whether or not concentrated, containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent

0402.91.00

Milk and cream, concentrated, not containing added sugar or other sweetening matter, not in powder, granules or other solid forms

0402.99.00

Milk and cream, whether or not concentrated, containing added sugar or other sweetening matter, not in powder, granules or other solid forms

0403.10.00

Yogurt

0403.90.10

Powdered buttermilk

0403.90.90

Liquid buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavored or containing added fruit, nuts or cocoa

0404.10.10

Whey powder and modified whey powder, whether or not concentrated or containing added sugar or other sweetening matter

0404.10.90

Whey and modified whey, not in powder, whether or not concentrated or containing added sugar or other sweetening matter

0404.90.00

Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included

0405.00.10

Butter

0405.00.90

Fats and oils derived from milk, other than butter

0406.10.00

Fresh (unripened or uncured) cheese, including whey cheese, and curd

0406.20.10

Cheddar cheese and cheddar types of cheese, grated or powdered

0406.20.90

Grated or powdered cheese of all kinds, other than cheddar and cheddar types

0406.30.00

Processed cheese, not grated or powdered

0406.40.00

Blue-veined cheese

0406.90.10

Cheddar cheese and cheddar types of cheese, not grated, powdered or processed

0406.90.90

Other cheese not elsewhere specified or included

0407.00.00

Birds' eggs, in shell, fresh, preserved or cooked

0408.11.00

Dried egg yolks, whether or not containing added sugar or other sweetening matter

0408.19.00

Egg yolks, fresh, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter

0408.91.00

Bird's eggs, not in shell, dried, whether or not containing added sugar or other sweetening matter

0408.99.00

Birds' eggs, not in shell, fresh, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter

1601.00.11

Sausages and similar products of meat, meat offal or blood of poultry of heading No. 01.05 or food preparation based on these products, in airtight containers

1602.10.10

Homogenized preparations of chicken or turkey

1602.20.20

Poultry liver paste

1602.31.10

Prepared meals of prepared or preserved turkey meat, meat offal or blood, other than sausages and similar products

1602.31.91

Prepared or preserved turkey meat, meat offal or blood, other than sausages and similar products, and other than prepared meals, in air-tight containers

1602.31.99

Prepared or preserved turkey meat, meat offal or blood, other than sausages and similar products, other than prepared meals, not in air-tight containers

1602.39.10

Prepared meals of prepared or preserved meat, meat offal or blood of poultry of heading No. 01.05 other than turkey (i.e., Gallus domesticus, ducks, geese or guinea fowls), other than sausages and similar products

1602.39.91

Prepared or preserved meat, meat offal or blood of poultry of heading No. 01.05 other than turkey (i.e., Gallus domesticus, ducks, geese or guinea fowls), other than sausages and similar products, and other than prepared meals, in air-tight containers

1602.39.99

Prepared or preserved meat, meat offal or blood, of poultry of heading No. 01.05 other than turkey (i.e., Gallus domesticus, ducks, geese or guinea fowls), other than sausages and similar products, other than prepared meals, not in air-tight containers

1901.90.31

Food preparations of goods of headings Nos. 04.01 to 04.04, not containing cocoa powder or containing cocoa powder in a proportion by weight of less than 10 percent, not elsewhere specified or included, containing more than 10 percent on a dry weight basis of milk solids

2105.00.00

Ice cream and other edible ice, whether or not containing cocoa

2106.90.70

Egg preparations not elsewhere specified or included

2309.90.31

Complete feeds and feed supplements, including concentrates, containing over 50 percent by weight in the dry state of milk solids

3501.10.00

Casein

3501.90.00

Caseinates and other casein derivatives; casein glues

3502.10.10

Egg albumin, dried, evaporated, desiccated or powdered

3502.10.90

Other egg albumin

#### Schedule of Mexico

For Mexico, a dairy, poultry or egg good is a good provided for in one of the following tariff items:

#### Mexican Tariff Items

##### Description

0105.11.01

Day old chickens without being fed during its transportation

0105.91.01

Game cocks

0105.91.99

Other

0105.99.99

Other poultry

0207.10.01

Turkey

0207.10.99

Other

0207.21.01

Chickens

0207.22.01

Turkey

0207.39.01

Mechanically deboned of poultry or turkey (not provided for in heading 16.01 or 16.02)

0207.39.02

Turkey

0207.39.99

Other

0207.41.01

Mechanically deboned of poultry or turkey (not provided for in heading 16.01 or 16.02)

0207.41.99

Other

0207.42.01

Mechanically deboned of poultry or turkey (not provided for in heading 16.01 or 16.02)

0207.42.99

Other

0207.50.01

Poultry livers, frozen

0209.00.01

Chicken or turkey fat

0210.90.99

Other

0401.10.01

In hermetic containers milk not concentrated

0401.10.99

Other

0401.20.01

In hermetic containers

0401.20.99

Other

0401.30.01

In hermetic containers

0401.30.99

Other

0402.10.01

Milk powder

0402.10.99

Other

0402.21.01

Milk powder

0402.21.99

Other

0402.29.99

Other

0402.91.01

Evaporated milk

0402.91.99

Other

0402.99.01

Condensed milk

0402.99.99

Other

0403.10.01

Yogurt

0403.90.01

Powdered milk whey with a protein content less than or equal to 12 percent

0403.90.99

Other butter whey

0404.10.01

Whey, concentrated, sweetened

0404.90.99

Other

0405.00.01

Butter, including the immediate container, with a weight less than or equal to 1 kg

0405.00.02

Butter, including the immediate container, with a weight over 1 kg

0405.00.03

Butiric fat, dehydrated

0405.00.99

Other

0406.10.01

Fresh cheese, including whey cheese

0406.20.01

Cheese, grated or powdered

0406.30.01

Melted cheese, not grated or powdered

0406.30.99

Other, melted cheese

0406.40.01

Blue veined cheese

0406.90.01

Hard paste cheese called sardo

0406.90.02

Hard paste reggi cheese

0406.90.03

Soft paste cologne cheese

0406.90.04

Hard or semi-hard cheeses with a fat content by weight less than or equal to 40 percent, and with a water content by weight in non-fat matter less than or equal to 47 percent (called "grana", "parmigiana" or "reggiano,") or with a non-fat matter content by weight over 47 percent without exceeding 72 percent (called "danloo, edam, fontan, fontina, fynbo, gouda, Avarti, maribo, samsoe, esron, italico, kernhem, Saint-Nectaire, Saint-Paulin, or talegi ")

0406.90.05

Petit suisse cheese

0406.90.06

Egmont cheese

0406.90.99

Other hard and semihard cheese

0407.00.01

Fresh birds eggs, fertile

0407.00.02

Frozen eggs

0407.00.99

Other poultry eggs

0408.11.01

Dried yolks

0408.19.99

Other

0408.91.01

Frozen or powdered  
0408.91.99  
Other  
0408.99.01  
Frozen or powdered  
0408.99.99  
Other  
1601.00.01  
Sausages or similar products of poultry or turkey  
1602.10.01  
Homogenized preparations of poultry or turkey  
1602.20.01  
Prepared or preserved liver of poultry or turkey  
1602.31.01  
Prepared or preserved turkey meat  
1602.39.99  
Other  
1901.90.03  
Food preparations containing over 10 percent, by weight, of milk solids  
2105.00.01  
Ice cream and similar products  
2106.90.09  
Egg preparations  
2309.90.11  
Preparations containing over 50 percent by weight of milk solids  
3501.10.01  
Casein  
3501.90.01  
Casein glues  
3501.90.02  
Caseinates  
3501.90.99  
Other  
3502.10.01  
Egg albumin

Annex 703.3

Special Safeguard Goods

Note: (For purposes of reference only, descriptions are provided next to the corresponding tariff provision).

Section A - Canada

Canadian Tariff Items

Description

0603.10.90



Fresh cut flowers and flower buds, other than orchids, of a kind suitable for bouquets or for ornamental purposes.

0702.00.91

Tomatoes, fresh or chilled, not for processing, (dutyable period).

0703.10.31

Onions or shallots, green, fresh or chilled (dutyable period).

0707.00.91

Cucumbers or gherkins, fresh or chilled, not for processing (dutyable period).

0710.80.20

Broccoli and cauliflowers, uncooked or cooked by steaming or boiling in water, frozen.

0811.10.10

Strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter, for processing.

0811.10.90

Strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter, other than for processing.

2002.90.00

Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, other than whole or in pieces.

## Section B - Mexico

### Mexican Tariff Items

#### Description

0103.91.99

Live swine, weighing less than 50 kilograms each, except purebred breeding animals and those with pedigree or selected breed certificate

0103.92.99

Live swine, weighing 50 kilograms or more each, except purebred breeding animals and those with pedigree or selected breed certificate

0203.11.01

Meat of swine, carcasses and half- carcasses, fresh or chilled

0203.12.01

Hams, shoulders or cuts thereof, with bone in, fresh or chilled

0203.19.99

Other swine meat, fresh or chilled

0203.21.01

Meat of swine, carcasses and half- carcasses, frozen

0203.22.01

Hams, shoulders and cuts thereof, with bone in, frozen

0203.29.99

Other swine meat, frozen

0210.11.01

Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked

0210.12.01

Bellies (streaky) and cuts thereof, salted, in brine, dried or smoked.

0210.19.99

Other swine meat, in brine, dried or smoked

0710.10.01

Potatoes, uncooked or cooked by steaming or boiling in water, frozen

0712.10.01

Dried potatoes, whole cut, sliced, broken or in powder, but not further prepared

0808.10.01

Apples, fresh

2004.10.01

Potatoes prepared or preserved otherwise than by vinegar or acetic acid, frozen

2005.20.01

Potatoes prepared or preserved otherwise than by vinegar or acetic acid, not frozen

2101.10.01

Extracts, essences or concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee

## Section C - United States

### U.S. Tariff Items

#### Description

0702.00.06

Tomatoes (except cherry tomatoes), fresh or chilled; if entered during the period from November 15 to the last day of the following February, inclusive

0702.00.20

Tomatoes (except cherry tomatoes), fresh or chilled; if entered during the period from March 1 to July 14, inclusive

0703.10.40

Onions and shallots, fresh or chilled (not including onion sets and not including pearl onions not over 16 mm in diameter) if entered January 1 to April 30, inclusive

0709.30.20

Eggplants (aubergines), fresh or chilled, if entered during the period from April 1 to June 30, inclusive

0709.60.00

"Chili" peppers; if entered during the period from October 1 to July 31, inclusive (current 0709.60.00.20)

0709.90.20

Squash, fresh or chilled; if entered during the period from October 1 to the following June 30, inclusive

0807.10.40

Watermelons, fresh; if entered during the period from May 1 to September 30, inclusive.

## Section B - Sanitary and Phytosanitary Measures

### Article 709: Scope and Coverage

In order to establish a framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures, this Section applies to any such measure of a Party that may, directly or indirectly, affect trade between the Parties.

#### Article 710: Relation to Other Chapters

Articles 301 (National Treatment) and 309 (Import and Export Restrictions), and the provisions of Article XX(b) of the GATT as incorporated into Article 2101(1) (General Exceptions), do not apply to any sanitary or phytosanitary measure.

#### Article 711: Reliance on Non-Governmental Entities

Each Party shall ensure that any non-governmental entity on which it relies in applying a sanitary or phytosanitary measure acts in a manner consistent with this Section.

#### Article 712: Basic Rights and Obligations

##### *Right to Take Sanitary and Phytosanitary Measures*

1. Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory, including a measure more stringent than an international standard, guideline or recommendation.

##### *Right to Establish Level of Protection*

2. Notwithstanding any other provision of this Section, each Party may, in protecting human, animal or plant life or health, establish its appropriate levels of protection in accordance with Article 715.

##### *Scientific Principles*

3. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is:

- a) based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions;
- b) not maintained where there is no longer a scientific basis for it; and
- c) based on a risk assessment, as appropriate to the circumstances.

##### *Non-Discriminatory Treatment*

4. Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party, or between goods of another Party and like goods of any other country, where identical or similar conditions prevail.

##### *Unnecessary Obstacles*

5. Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility.

#### *Disguised Restrictions*

6. No Party may adopt, maintain or apply any sanitary or phytosanitary measure with a view to, or with the effect of, creating a disguised restriction on trade between the Parties.

#### Article 713: International Standards and Standardizing Organizations

1. Without reducing the level of protection of human, animal or plant life or health, each Party shall use, as a basis for its sanitary and phytosanitary measures, relevant international standards, guidelines or recommendations with the objective, among others, of making its sanitary and phytosanitary measures equivalent or, where appropriate, identical to those of the other Parties.

2. A Party's sanitary or phytosanitary measure that conforms to a relevant international standard, guideline or recommendation shall be presumed to be consistent with Article 712. A measure that results in a level of sanitary or phytosanitary protection different from that which would be achieved by a measure based on a relevant international standard, guideline or recommendation shall not for that reason alone be presumed to be inconsistent with this Section.

3. Nothing in Paragraph 1 shall be construed to prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of this Section, a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation.

4. Where a Party has reason to believe that a sanitary or phytosanitary measure of another Party is adversely affecting or may adversely affect its exports and the measure is not based on a relevant international standard, guideline or recommendation, it may request, and the other Party shall provide in writing, the reasons for the measure.

5. Each Party shall, to the greatest extent practicable, participate in relevant international and North American standardizing organizations, including the *Codex Alimentarius Commission*, the *International Office of Epizootics*, the *International Plant Protection Convention*, and the *North American Plant Protection Organization*, with a view to promoting the development and periodic review of international standards, guidelines and recommendations.

#### Article 714: Equivalence

1. Without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable and in accordance with this Section, pursue equivalence of their respective sanitary and phytosanitary measures.

2. Each importing Party:

a) shall treat a sanitary or phytosanitary measure adopted or maintained by an exporting Party as equivalent to its own where the exporting Party, in cooperation with the importing Party, provides to the importing Party scientific evidence or other information, in accordance with risk assessment methodologies agreed on by those Parties, to demonstrate objectively, subject to subparagraph (b), that the exporting Party's measure achieves the importing Party's appropriate level of protection;

b) may, where it has a scientific basis, determine that the exporting Party's measure does not achieve the importing Party's appropriate level of protection; and

c) shall provide to the exporting Party, on request, its reasons in writing for a determination under subparagraph (b).

3. For purposes of establishing equivalence, each exporting Party shall, on the request of an importing Party, take such reasonable measures as may be available to it to facilitate access in its territory for inspection, testing and other relevant procedures.

4. Each Party should, in the development of a sanitary or phytosanitary measure, consider relevant actual or proposed sanitary or phytosanitary measures of the other Parties.

#### Article 715: Risk Assessment and Appropriate Level of Protection

1. In conducting a risk assessment, each Party shall take into account:

a) relevant risk assessment techniques and methodologies developed by international or North American standardizing organizations;

b) relevant scientific evidence;

c) relevant processes and production methods;

d) relevant inspection, sampling and testing methods;

e) the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence;

f) relevant ecological and other environmental conditions; and

g) relevant treatments, such as quarantines.

2. Further to paragraph 1, each Party shall, in establishing its appropriate level of protection regarding the risk associated with the introduction, establishment or spread of an animal or plant pest or disease, and in assessing the risk, also take into account the following economic factors, where relevant:

a) loss of production or sales that may result from the pest or disease;

b) costs of control or eradication of the pest or disease in its territory; and

c) the relative cost-effectiveness of alternative approaches to limiting risks.

3. Each Party, in establishing its appropriate level of protection:

a) should take into account the objective of minimizing negative trade effects; and

b) shall, with the objective of achieving consistency in such levels, avoid arbitrary or unjustifiable distinctions in such levels in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another Party or constitute a disguised restriction on trade between the Parties.

4. Notwithstanding paragraphs (1) through (3) and Article 712(3)(c), where a Party conducting a risk assessment determines that available relevant scientific evidence or other information is insufficient to complete the assessment, it may adopt a provisional sanitary or phytosanitary measure on the basis of available relevant information, including from international or North American standardizing organizations and from sanitary or phytosanitary measures of other Parties. The Party shall, within a reasonable period after information sufficient to complete the assessment is presented to it, complete its assessment, review and, where appropriate, revise the provisional measure in the light of the assessment.

5. Where a Party is able to achieve its appropriate level of protection through the phased application of a sanitary or phytosanitary measure, it may, on the request of another Party and in accordance with this Section, allow for such a phased application, or grant specified exceptions for limited periods from the measure, taking into account the requesting Party's export interests.

#### Article 716: Adaptation to Regional Conditions

1. Each Party shall adapt any of its sanitary or phytosanitary measures relating to the introduction, establishment or spread of an animal or plant pest or disease, to the sanitary or phytosanitary characteristics of the area where a good subject to such a measure is produced and the area in its territory to which the good is destined, taking into account any relevant conditions, including those relating to transportation and handling, between those areas. In assessing such characteristics of an area, including whether an area is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, each Party shall take into account, among other factors:

a) the prevalence of relevant pests or diseases in that area;

b) the existence of eradication or control programs in that area; and

c) any relevant international standard, guideline or recommendation.

2. Further to paragraph 1, each Party shall, in determining whether an area is a pest-free or disease-free area or an area of low pest or disease prevalence, base its determination on factors such as geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in that area.

3. Each importing Party shall recognize that an area in the territory of the exporting Party is, and is likely to remain, a pest-free or disease-free area or an area of low pest or disease prevalence, where the exporting Party provides to the importing Party scientific evidence or other information sufficient to so demonstrate to the satisfaction of the importing Party. For this purpose, each exporting Party shall provide reasonable access in its territory to the importing Party for inspection, testing and other relevant procedures.

4. Each Party may, in accordance with this Section:

a) adopt, maintain or apply a different risk assessment procedure for a pest-free or disease-free area than for an area of low pest or disease prevalence, or

b) make a different final determination for the disposition of a good produced in a pest-free or disease-free area than for a good produced in an area of low pest or disease prevalence, taking into account any relevant conditions, including those relating to transportation and handling.

5. Each Party shall, in adopting, maintaining or applying a sanitary or phytosanitary measure relating to the introduction, establishment or spread of an animal or plant pest or disease, accord a good produced in a pest-free or disease-free area in the territory of another Party no less favorable treatment than it accords a good produced in a pest-free or disease-free area, in another country, that poses the same level of risk. The Party shall use equivalent risk assessment techniques to evaluate relevant conditions and controls in the pest-free or disease-free area and in the area surrounding that area and take into account any relevant conditions, including those relating to transportation and handling.

6. Each importing Party shall pursue an agreement with an exporting Party, on request, on specific requirements the fulfillment of which allows a good produced in an area of low pest or disease prevalence in the territory of an exporting Party to be imported into the territory of the importing Party and achieves the importing Party's appropriate level of protection.

#### Article 717: Control, Inspection and Approval Procedures

1. Each Party, with respect to any control or inspection procedure that it conducts:

(a) shall initiate and complete the procedure as expeditiously as possible and in no less favorable manner for a good of another Party than for a like good of the Party or of any other country;

(b) shall publish the normal processing period for the procedure or communicate the anticipated processing period to the applicant on request;

(c) shall ensure that the competent body

(i) on receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency,

(ii) transmits to the applicant as soon as possible the results of the procedure in a form that is precise and complete so that the applicant may take any necessary corrective action,

(iii) where the application is deficient, proceeds as far as practicable with the procedure if the applicant so requests, and

(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;

(d) shall limit the information the applicant is required to supply to that necessary for conducting the procedure;

(e) shall accord confidential or proprietary information arising from, or supplied in connection with, the procedure conducted for a good of another Party

(i) treatment no less favorable than for a good of the Party, and

(ii) in any event, treatment that protects the applicant's legitimate commercial interests, to the extent provided under the Party's law;

(f) shall limit any requirement regarding individual specimens or samples of a good to that which is reasonable and necessary;

(g) should not impose a fee for conducting the procedure that is higher for a good of another Party than is equitable in relation to any such fee it imposes for its like goods or for like goods of any other country, taking into account communication, transportation and other related costs;

(h) should use criteria for selecting the location of facilities at which the procedure is conducted that do not cause unnecessary inconvenience to an applicant or its agent;

(i) shall provide a mechanism to review complaints concerning the operation of the procedure and to take corrective action when a complaint is justified;

(j) should use criteria for selecting samples of goods that do not cause unnecessary inconvenience to an applicant or its agent; and

(k) shall limit the procedure, for a good modified subsequent to a determination that the good fulfills the requirements of the applicable sanitary or phytosanitary measure, to that necessary to determine that the good continues to fulfill the requirements of that measure.

2. Each Party shall apply, with such modifications as may be necessary, paragraphs 1(a) through (i) to its approval procedures.



3. Where an importing Party's sanitary or phytosanitary measure requires the conduct of a control or inspection procedure at the level of production, an exporting Party shall, on the request of the importing Party, take such reasonable measures as may be available to it to facilitate access in its territory and to provide assistance necessary to facilitate the conduct of the importing Party's control or inspection procedure.

4. A Party maintaining an approval procedure may require its approval for the use of an additive, or its establishment of a tolerance for a contaminant, in a food, beverage or feedstuff, under that procedure prior to granting access to its domestic market for a food, beverage or feedstuff containing that additive or contaminant. Where such Party so requires, it shall consider using a relevant international standard, guideline or recommendation as the basis for granting access until it completes the procedure.

#### Article 718: Notification, Publication and Provision of Information

1. Further to Articles 1802 (Publication) and 1803 (Notification and Provision of Information), each Party proposing to adopt or modify a sanitary or phytosanitary measure of general application at the federal level shall:

(a) at least 60 days prior to the adoption or modification of the measure, other than a law, publish a notice and notify in writing the other Parties of the proposed measure and provide to the other Parties and publish the full text of the proposed measure, in such a manner as to enable interested persons to become acquainted with the proposed measure;

(b) identify in the notice and notification the good to which the measure would apply, and provide a brief description of the objective and reasons for the measure;

(c) provide a copy of the proposed measure to any Party or interested person that so requests and, wherever possible, identify any provision that deviates in substance from relevant international standards, guidelines or recommendations; and

(d) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

2. Each Party shall seek, through appropriate measures, to ensure, with respect to a sanitary or phytosanitary measure of a state or provincial government:

(a) that, at an early appropriate stage, a notice and notification of the type referred to in paragraphs 1(a) and (b) are made prior to their adoption; and

(b) observance of paragraphs 1(c) and (d).

3. Where a Party considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection, it may omit any step set out in paragraph 1 or 2, provided that, on adoption of a sanitary or phytosanitary measure, it shall:

(a) immediately provide to the other Parties a notification of the type referred to in paragraph 1(b), including a brief description of the urgent problem;

(b) provide a copy of the measure to any Party or interested person that so requests; and

(c) without discrimination, allow other Parties and interested persons to make comments in writing and shall, on request, discuss the comments and take the comments and the results of the discussions into account.

4. Each Party shall, except where necessary to address an urgent problem referred to in paragraph 3, allow a reasonable period between the publication of a sanitary or phytosanitary measure of general application and the date that it becomes effective to allow time for interested persons to adapt to the measure.

5. Each Party shall designate a government authority responsible for the implementation at the federal level of the notification provisions of this Article, and shall notify the other Parties thereof. Where a Party designates two or more government authorities for this purpose, it shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each such authority.

6. Where an importing Party denies entry into its territory of a good of another Party because it does not comply with a sanitary or phytosanitary measure, the importing Party shall provide a written explanation to the exporting Party, on request, that identifies the applicable measure and the reasons that the good is not in compliance.

#### Article 719: Inquiry Points

1. Each Party shall ensure that there is one inquiry point that is able to answer all reasonable inquiries from other Parties and interested persons, and to provide relevant documents, regarding:

(a) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure, proposed, adopted or maintained in its territory at the federal, state or provincial government level;

(b) the Party's risk assessment procedures and factors it considers in conducting the assessment and in establishing its appropriate levels of protection;

(c) the membership and participation of the Party, or its relevant federal, state or provincial government authorities in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements within the scope of this Section, and the provisions of those systems and arrangements; and

(d) the location of notices published pursuant to this Section or where such information can be obtained.

2. Each Party shall ensure that where copies of documents are requested by another Party or by interested persons in accordance with this Section, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

#### Article 720: Technical Cooperation

1. Each Party shall, on the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants for the acquisition of technical expertise, training and equipment that will facilitate the Party's adjustment to and compliance with a Party's sanitary or phytosanitary measure.

2. Each Party shall, on the request of another Party:

(a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and

(b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

#### Article 721: Limitations on the Provision of Information

Nothing in this Section shall be construed to require a Party to:

(a) communicate, publish texts or provide particulars or copies of documents other than in an official language of the Party; or

(b) furnish any information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

#### Article 722: Committee on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures, comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Committee should facilitate:

(a) the enhancement of food safety and improvement of sanitary and phytosanitary conditions in the territories of the Parties;

(b) activities of the Parties pursuant to Articles 713 and 714;

(c) technical cooperation between the Parties, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures; and

(d) consultations on specific matters relating to sanitary or phytosanitary measures.

### 3. The Committee:

(a) shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort;

(b) may draw on such experts and expert bodies as it considers appropriate;

(c) shall report annually to the Commission on the implementation of this Section;

(d) shall meet on the request of any Party and, unless the Parties otherwise agree, at least once each year; and

(e) may, as it considers appropriate, establish and determine the scope and mandate of working groups.

### Article 723: Technical Consultations

1. A Party may request consultations with another Party on any matter covered by this Section.

2. Each Party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 713(5), for advice and assistance on sanitary and phytosanitary matters within their respective mandates.

3. Where a Party requests consultations regarding the application of this Section to a Party's sanitary or phytosanitary measure, and so notifies the Committee, the Committee may facilitate the consultations, if it does not consider the matter itself, by referring the matter for non-binding technical advice or recommendations to a working group, including an ad hoc working group, or to another forum.

4. The Committee should consider any matter referred to it under paragraph 3 as expeditiously as possible, particularly regarding perishable goods, and promptly forward to the Parties any technical advice or recommendations that it develops or receives concerning the matter. The Parties involved shall provide a written response to the Committee concerning the technical advice or recommendations within such time as the Committee may request.

5. Where the involved Parties have had recourse to consultations facilitated by the Committee under paragraph 3, the consultations shall, on the agreement of the Parties involved, constitute consultations under Article 2006 (Consultations).

6. The Parties confirm that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with this Section shall have the burden of establishing the inconsistency.

### Article 724: Definitions For purposes of this Section:

animal includes fish and wild fauna;

appropriate level of protection means the level of protection of human, animal or plant life or health in the territory of a Party that the Party considers appropriate;

approval procedure means any registration, notification or other mandatory administrative procedure for:

(a) approving the use of an additive for a stated purpose or under stated conditions; or

(b) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage or feedstuff containing the additive or contaminant;

area means a country, part of a country or all or parts of several countries;

area of low pest or disease prevalence means an area in which a specific pest or disease occurs at low levels;

contaminant includes pesticide and veterinary drug residues and extraneous matter;

control or inspection procedure means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing or use of a good, but does not mean an approval procedure;

international standard, guideline or recommendation means a standard, guideline or recommendation:

(a) regarding food safety, adopted by the *Codex Alimentarius Commission*, including one regarding decomposition elaborated by the *Codex Committee on Fish and Fishery Products*, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(b) regarding animal health and zoonoses, developed under the auspices of the *International Office of Epizootics*;

(c) regarding plant health, developed under the auspices of the *Secretariat of the International Plant Protection Convention* in cooperation with the *North American Plant Protection Organization*, or

(d) established by or developed under any other international organization agreed on by the Parties;

pest includes a weed;

pest-free or disease-free area means an area in which a specific pest or disease does not occur;

plant includes wild flora;

risk assessment means an evaluation of:

(a) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff;

sanitary or phytosanitary measure means a measure that a Party adopts, maintains or applies to:

(a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease,

(b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage or feedstuff,

(c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof, or

(d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest,

including end product criteria; a product-related processing or production method; a testing, inspection, certification or approval procedure; a relevant statistical method; a sampling procedure; a method of risk assessment; a packaging and labelling requirement directly related to food safety; and a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation; and

scientific basis means a reason based on data or information derived using scientific methods.

## Chapter Eight: Emergency Action

### Article 801: Bilateral Actions

1. Subject to paragraphs 2 through 4 and Annex 801.1, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury: